

SENATE, No. 420

STATE OF NEW JERSEY

220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:
Senator BOB SMITH
District 17 (Middlesex and Somerset)

SYNOPSIS

“Water Resources Protection Trust Fund Act”; establishes user fee on water consumption and diversion; utilizes fee revenue for water quality, supply, and infrastructure projects.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning water quality, supply, and infrastructure,
2 supplementing Title 58 of the Revised Statutes, and amending
3 P.L.1985, c.334.
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. (New section) Sections 1 through 10 of P.L. , c. (C.)
9 (pending before the Legislature as this bill) shall be known and may
10 be cited as the “Water Resources Protection Trust Fund Act.”
11

12 2. (New section) The Legislature finds and declares that New
13 Jersey, already the most densely populated state in the nation,
14 continues to experience deterioration of its water resources,
15 including its rivers, streams, lakes, wetlands, and underground
16 aquifers; that these resources, by virtue of their capacity to sustain
17 substantial reserves of potable water, afford flood protection, serve
18 as habitat for countless animal, bird, and plant species, purify the
19 air, provide recreational opportunities, and otherwise promote the
20 environment necessary for a high quality of life, constitute not only
21 an invaluable and irreplaceable asset to the present citizens of New
22 Jersey, but also a trust for future generations; and that, as the
23 steward of that trust, it is incumbent upon the State to commit itself
24 to the preservation in perpetuity of those resources indispensable to
25 the continued supply of clean water and to the health and welfare of
26 its citizens.

27 The Legislature further finds and declares that much of the
28 State’s drinking water infrastructure has aged past its useful life and
29 is in dire need of repair and replacement; that failure to repair or
30 replace broken pipes has led to increased water main breaks and
31 service interruptions, more frequent and costly emergency repairs,
32 the loss of large quantities of treated drinking water to leakage, and
33 a lack of sufficient water infrastructure to support local and State
34 economic growth; that lead in drinking water infrastructure still
35 threatens the health and safety of the citizens of the State, especially
36 pregnant women and children; that a modern and reliable water
37 infrastructure provides the foundation for healthy communities and
38 a prosperous economy; and that current levels of federal, State, and
39 local funding are insufficient to ensure the preservation of the
40 State’s water resources and to make the necessary improvements to
41 the State’s water infrastructure.

42 The Legislature therefore determines that it is in the public
43 interest to establish a stable source of funding, based on user fees
44 on water consumption and water diversion, for the long-term
45 preservation and protection of the State's water resources and the
46 improvement of its drinking water infrastructure.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 3. (New section) As used in sections 1 through 10 of
2 P.L. , c. (C.) (pending before the Legislature as this bill):

3 “Acquisition” means the obtaining of a fee simple or lesser
4 interest in land, including, but not limited to, a development
5 easement, a conservation restriction or easement, or any other
6 restriction or easement permanently restricting development, by
7 purchase, installment purchase agreement, gift, donation, eminent
8 domain by the State or a local government unit, or devise.

9 “Combined sewer overflow” means the discharge of untreated or
10 partially treated stormwater runoff and wastewater from a combined
11 sewer system into a body of water.

12 “Combined sewer system” means a sewer system designed to
13 carry wastewater at all times, which is also designed to collect and
14 transport stormwater runoff from streets and other sources, thereby
15 serving a combined purpose.

16 “Consumptive use” means any use of water diverted from
17 surface or ground waters other than a nonconsumptive use.

18 “Department” means the Department of Environmental
19 Protection.

20 “Diversion” or “divert” means the taking or impoundment of
21 water from a river, stream, lake, pond, aquifer, well, other
22 underground source, or other water body, whether or not the water
23 is returned thereto, consumed, made to flow into another stream or
24 basin, or discharged elsewhere.

25 “Fund” means the Water Resources Protection Trust Fund
26 established pursuant to section 4 of this act.

27 “Local government unit” means (1) a State authority, district
28 water supply commission, county, municipality, municipal, county
29 or regional utilities authority, municipal water district, joint meeting
30 or any other political subdivision of the State authorized pursuant to
31 law to operate or maintain a public water system or to construct,
32 rehabilitate, operate or maintain water supply facilities or otherwise
33 provide water for human consumption; or (2) a municipality,
34 county, or other political subdivision of the State authorized to
35 administer, protect, develop, and maintain water quality, or any
36 agency thereof, the primary purpose of which is to administer,
37 protect, develop, and maintain water quality.

38 “Nonconsumptive use” means the use of water diverted from
39 surface or ground waters in such a manner that it is returned to the
40 surface or ground water at or near the point from which it was taken
41 without substantial diminution in quantity or substantial impairment
42 of quality.

43 “Person” means any individual, corporation, company,
44 partnership, firm, association, owner, or operator of a public water
45 system, political subdivision of the State, and any state, or interstate
46 agency or Federal agency.

47 “Public community water system” means a public water system
48 which serves at least 15 service connections used by year-round
49 residents or regularly serves at least 25 year-round residents.

1 “Public water system” means a system for the provision to the
2 public of water for human consumption through pipes or other
3 constructed conveyances, if the system has at least 15 service
4 connections or regularly serves an average of at least 25 individuals
5 daily at least 60 days out of the year. “Public water system”
6 includes: (1) any collection, treatment, storage and distribution
7 facilities under control of the operator of the system and used
8 primarily in connection with the system; and (2) any collection or
9 pre-treatment storage facilities not under the control which are used
10 primarily in connection with such system.

11 “Safe or dependable yield” or “safe yield” means that
12 maintainable yield of water from a surface or ground water source
13 or sources which is available continuously during projected future
14 conditions, including a repetition of the most severe drought of
15 record, without creating undesirable effects, as determined by the
16 department.

17 “Small water company” means any company, purveyor, or entity,
18 other than a governmental agency, that provides water for human
19 consumption and which regularly serves less than 1,000 customer
20 connections, including nonprofit, noncommunity water systems
21 owned or operated by a nonprofit group or organization.

22 “Unaccounted-for water” means water withdrawn by a local
23 government unit or water purveyor from a source and not accounted
24 for as being delivered to customers in measured amounts.

25 “Wastewater” means residential, commercial, industrial, or
26 agricultural liquid waste, sewerage, or any combination thereof, or
27 other liquid residue discharged or collected into a sewer system, or
28 stormwater management system, or any combination thereof.

29 “Wastewater treatment system” means any equipment, plants,
30 structures, machinery, apparatus, or land, or any combination
31 thereof, acquired, used, constructed or operated by, or on behalf of,
32 a local government unit for the storage, collection, reduction,
33 recycling, reclamation, disposal, separation, or other treatment of
34 wastewater or sewage sludge, or for the collection or treatment, or
35 both, of stormwater runoff and wastewater, or for the final disposal
36 of residues resulting from the treatment of wastewater, including,
37 but not limited to, pumping and ventilating stations, treatment
38 plants and works, connections, outfall sewers, interceptors, trunk
39 lines, stormwater management systems, and other personal property
40 and appurtenances necessary for their use or operation. "Wastewater
41 treatment system" shall include a stormwater management system
42 or a combined sewer system.

43 “Water purveyor” means any investor-owned water company or
44 small water company that owns or operates a public water system.

45 “Water quality, supply, and infrastructure project” means any
46 project to accomplish the purposes set forth in section 6 of this act.

47 “Water supply infrastructure project” means a water supply
48 project undertaken by or on behalf of a water purveyor for the
49 purpose of drought mitigation.

1 4. (New section) a. There is established in the Department of
2 Environmental Protection a special non-lapsing fund to be known as
3 the “Water Resources Protection Trust Fund.” Moneys in the fund
4 shall be used for State water quality, supply, and infrastructure
5 projects and to provide grants or low-interest loans to assist local
6 government units and water purveyors in funding water quality,
7 supply, and infrastructure projects authorized pursuant to section 6
8 of this act. The fund shall be administered by the department and
9 shall be credited with all revenue collected pursuant to sections 7
10 and 8 of this act, all interest or other investment income received on
11 moneys in the fund, and all sums received as repayment of principal
12 and interest on outstanding loans made from the fund. The
13 department may use up to one percent of the total revenues
14 deposited in the fund during the fiscal year to cover administrative
15 expenses incurred in implementing the provisions of this act.

16 The department may carry forward any unexpended balances in
17 the fund as of June 30 of each year.

18 b. Unless otherwise expressly provided by the specific
19 appropriation thereof by the Legislature, which shall take the form
20 of a discrete legislative appropriations act and shall not be included
21 within the annual appropriations act, all available moneys in the
22 fund shall be appropriated annually solely for the purposes set forth
23 in section 6 of this act.

24 c. The department may make and contract to make low-interest
25 loans to local government units or water purveyors in accordance
26 with and subject to the provisions of this act to finance the cost of
27 water quality, supply, and infrastructure projects authorized
28 pursuant to section 6 of this act. The loans may be made subject to
29 those terms and conditions as the department shall determine to be
30 consistent with the purposes thereof. Each loan and the terms and
31 conditions thereof shall be subject to approval by the State
32 Treasurer, and the department shall make available to the State
33 Treasurer all information, statistical data, and reports of
34 independent consultants or experts as the State Treasurer deems
35 necessary in order to evaluate the loan.

36 d. To be eligible for a grant pursuant to this act, a local
37 government unit or water purveyor shall demonstrate the ability to
38 match the grant requested by generating funds in ratios specified by
39 the department.

40

41 5. (New section) a. On or before January 15 of each year,
42 the department shall submit to the Legislature a financial plan
43 designed to implement the financing of the projects on the project
44 priority list approved pursuant to section 6 of this act. The financial
45 plan shall contain an enumeration of the water quality, supply, and
46 infrastructure projects for which the department intends to provide
47 funds and the terms and conditions of any loans or grants associated
48 therewith, the anticipated rate of interest per year, and the
49 repayment schedule for any loans. The financial plan shall also set

1 forth a complete operating and financial statement covering the
2 department's proposed operations during the forthcoming fiscal
3 year, summarize the status of each project for which grants or loans
4 have been made, and describe any major impediments to the
5 accomplishment of the planned projects.

6 b. Any project funded pursuant to this act shall be eligible for
7 financing pursuant to the "New Jersey Infrastructure Trust Act,"
8 P.L.1985, c.334 (C.58:11B-1 et seq.).
9

10 6. (New section) a. Moneys in the Water Resources
11 Protection Trust Fund may be used for the following purposes:

12 (1) the costs of transferring water between public water systems
13 during a state of water emergency or to avert a drought emergency
14 in all or any part of the State;

15 (2) the protection of existing water supplies through the
16 acquisition of watershed and wetlands areas;

17 (3) the interconnection of existing water supplies, and the
18 extension of water supplies to areas with contaminated ground
19 water supplies;

20 (4) water supply infrastructure projects undertaken by water
21 purveyors for the purpose of drought mitigation;

22 (5) the costs of a safe or dependable yield analysis of the State's
23 surface and ground water sources undertaken by the department as
24 provided in section 9 of this act, up to \$100,000;

25 (6) projects to rehabilitate, repair, or replace public water
26 system infrastructure;

27 (7) grants to local government units to finance the cost of
28 developing asset management programs for public water systems;
29 and

30 (8) projects to remediate lead in drinking water infrastructure.

31 b. In addition to the projects authorized in subsection a. of this
32 section, beginning 10 years after the effective date of
33 P.L. , c. (C.) (pending before the Legislature as this bill),
34 moneys in the fund may be used for projects to rehabilitate, repair,
35 or replace wastewater treatment system infrastructure, including,
36 but not limited to, combined sewer overflow abatement projects.

37 c. Whenever any moneys in the fund are used for the protection
38 of existing water supplies through the acquisition of watershed and
39 wetlands areas as provided in paragraph (2) of subsection a. of this
40 section, the percentage of moneys used for such acquisitions in the
41 Highlands region designated pursuant to section 3 of P.L.2004,
42 c.120 (C.13:20-3) shall be an amount equivalent to not less than the
43 percentage of total revenues deposited in the fund pursuant to
44 sections 7 and 8 which were collected from user fee payers within
45 the Highlands region, and the percentage of moneys used for such
46 acquisitions in the Pinelands area designated pursuant to section 10
47 of P.L.1979, c.111 (C.13:18A-11) shall be an amount equivalent to
48 not less than the percentage of total revenues deposited in the fund

1 pursuant to sections 7 and 8 which were collected from user fee
2 payers within the Pinelands area.

3 d. On or before May 15 of each fiscal year, the department
4 shall prepare and submit to the Legislature for approval a project
5 priority list recommending the particular water quality, supply, and
6 infrastructure projects to be funded for the upcoming fiscal year.
7 The project priority list shall include a description of each project,
8 its purpose, impact, cost, and construction schedule, and an
9 explanation of the manner in which priorities were established.

10 e. No expenditure from the fund shall be made except by an
11 appropriation made pursuant to law and in accordance with the
12 project priority list developed by the department. Each such
13 appropriation act shall clearly set forth all terms and conditions
14 governing the expenditure of the appropriation, shall identify each
15 specific project or projects for which an appropriation is made, and
16 may provide such sums as may be necessary to cover the costs
17 associated with the administration thereof.

18

19 7. (New section) a. There is imposed upon the owner or
20 operator of every public community water system a water
21 consumption user fee of \$0.40 per 1,000 gallons of water delivered
22 to a consumer, not including water delivered for resale.

23 b. (1) Every person subject to the water consumption user fee
24 shall, on the effective date of this section, and quarterly thereafter,
25 render a return under oath to the Director of the Division of
26 Taxation, on such forms as may be prescribed by the director,
27 indicating the number of gallons of water delivered to a consumer,
28 and at that time shall pay the full amount due. The director may
29 prescribe a consolidated form for reporting the amount due under
30 the water consumption user fee imposed by this section and the tax
31 imposed under section 11 of P.L.1983, c.443 (C.58:12A-21).

32 (2) Every person subject to the water consumption user fee
33 shall, within 30 days after the effective date of this act, register with
34 the director on forms prescribed by the director.

35 c. If a return required by this section is not filed, or if a return
36 when filed is incorrect or insufficient in the opinion of the director,
37 the amount due shall be determined by the director from such
38 information as may be available. Notice of the determination shall
39 be given to the person subject to the water consumption user fee.
40 The determination shall finally and irrevocably fix the amount due,
41 unless the person on whom it is imposed, within 90 days after the
42 giving of the notice of the determination, shall file a protest in
43 writing as provided in R.S.54:49-18 and request a hearing, or unless
44 the director on the director's own motion shall re-determine the
45 same. After the hearing the director shall give notice of the
46 determination to the person on whom the water consumption user
47 fee is imposed.

48 d. Any person subject to the water consumption user fee who
49 fails to file a return when due or to pay the user fee when it

1 becomes due, as herein provided, shall be subject to such penalties
2 and interest as provided in the State Uniform Tax Procedure Law,
3 R.S.54:48-1 et seq. If the director determines that the failure to
4 comply with any provision of this section was excusable under the
5 circumstances, the director may remit that part or all of the penalty
6 as shall be appropriate under the circumstances.

7 e. The director shall deposit all revenues collected pursuant to
8 this section in the Water Resources Protection Trust Fund
9 established pursuant to section 4 of this act.

10 f. In addition to the other powers granted to the director in this
11 section, the director is authorized to:

12 (1) Delegate to any officer or employee of the division those
13 powers and duties as the director deems necessary to carry out
14 efficiently the provisions of this section, and the person to whom
15 the power has been delegated shall possess and may exercise all of
16 these powers and perform all of the duties delegated by the director;
17 and

18 (2) Prescribe and distribute all necessary forms for the
19 implementation of this section.

20 g. Any person subject to the water consumption user fee who is
21 subject to the jurisdiction or rate regulation of the Board of Public
22 Utilities as a public utility shall collect the water consumption user
23 fee imposed by this section by imposing an automatic surcharge on
24 any tariff established pursuant to law for water rates and charges.
25 The Board of Public Utilities shall issue an appropriate order
26 adjusting the tariffs established pursuant to law to reflect these
27 payments. In issuing any order required by this subsection, the
28 Board of Public Utilities shall be exempt from the provisions of
29 R.S.48:2-21.

30 h. Any person subject to the water consumption user fee may
31 collect the water consumption user fee imposed by this section by
32 including the amount of the user fee due as a separate line item on
33 every customer bill or other statement presented to consumers.
34 The person subject to the water consumption user fee may use up to
35 one percent of all revenues collected to defray the costs of
36 administration and collection of the water consumption user fee.
37 The director shall credit the proper amount to the person subject to
38 the water consumption user fee upon receipt of written
39 documentation of the actual costs expended for the collection of the
40 water consumption user fee.

41 i. The water consumption user fee imposed by this section
42 shall be governed in all respects by the provisions of the State
43 Uniform Tax Procedure Law, R.S.54:48-1 et seq., except only to the
44 extent that a specific provision of this section may be in conflict
45 therewith.

46 j. The water consumption user fee imposed by this section shall
47 be collected in the same manner as the tax imposed under section 11
48 of P.L.1983, c.443 (C.58:12A-21).

1 k. The water consumption user fee imposed by this section
2 shall not be imposed on:

3 (1) water delivered to a consumer for the purpose of storage for
4 future water supplies;

5 (2) water delivered to a consumer for the purpose of transferring
6 water between public water systems;

7 (3) water delivered to a consumer for emergency purposes,
8 including firefighting, flood prevention, response to a discharge of
9 hazardous substances, or for other emergency purposes as may be
10 determined by the department;

11 (4) water delivered to a consumer, including water delivered for
12 resale, or a bulk sale of water delivered to a consumer in another
13 public water system; or

14 (5) unaccounted-for water of 15 percent or less. In the case of
15 unaccounted for water greater than 15 percent, the local government
16 unit or water purveyor may petition the department for an increase
17 in the percentage of unaccounted-for water eligible for an
18 exemption pursuant to this subsection. The allowable increase in
19 the percentage of unaccounted-for water shall be determined by the
20 department based on a finding of fact that the leakage reported to
21 the department is not the result of a critically needed water supply
22 infrastructure project.

23 l. The water consumption user fee imposed by this section
24 shall not be imposed on water delivered to a consumer for purposes
25 of reducing air emissions or water pollutants necessary for
26 compliance with local, State, or federal regulations or for water
27 derived from reuse of effluent from a primary wastewater treatment
28 system, which effluent would otherwise have been discharged into
29 the waters of the State.

30 (1) Any person claiming a complete or partial exemption from
31 the water consumption user fee pursuant to this subsection shall
32 annually file with the director a written certification indicating the
33 percentage and number of gallons of water delivered to a consumer
34 for which the exemption is claimed. The director, in consultation
35 with the department, may conduct an audit of the certification. Any
36 person who files a false certification shall be subject to such
37 penalties and interest as provided in the State Uniform Tax
38 Procedure Law, R.S.54:48-1 et seq.

39 (2) The director shall authorize a refund to any person claiming
40 a complete or partial exemption from the water consumption user
41 fee who has met the requirements of this subsection. The refund
42 shall be in the amount of the percentage of the water annually
43 delivered to a consumer for which the exemption is claimed
44 multiplied by the person's total annual water consumption user fee
45 liability.

46
47 8. (New section) a. There is imposed upon every person
48 required to obtain a diversion permit issued by the department
49 pursuant to the provisions of sections 6 and 7 of P.L.1981, c.262

1 (C.58:1A-6 and C.58:1A-7), including any person who is required
2 to apply for and obtain a water use registration pursuant to rules and
3 regulations adopted by the department to administer and enforce the
4 provisions of P.L.1981, c.262 (C.58:1A-1 et seq.) or P.L.1993,
5 c.202 (C.58:1A-7.3 et al.), a water diversion user fee. The water
6 diversion user fee shall be levied at the rate of \$0.40 per 1,000
7 gallons of water diverted for a consumptive use.

8 b. (1) Every person subject to the water diversion user fee
9 shall, on the effective date of this section, and quarterly thereafter,
10 render a return under oath to the Director of the Division of
11 Taxation, on such forms as may be prescribed by the director,
12 indicating the number of gallons of water diverted, and at that time
13 shall pay the full amount due.

14 (2) Every person subject to the water diversion user fee shall,
15 within 30 days after the date of enactment of this act, register with
16 the director on forms prescribed by the director.

17 c. (1) If a return required by this section is not filed, or if a
18 return when filed is incorrect or insufficient in the opinion of the
19 director, the amount due shall be determined by the director from
20 such information as may be available. Notice of the determination
21 shall be given to the person subject to the water diversion user fee.
22 The determination shall finally and irrevocably fix the amount due,
23 unless the person on whom it is imposed, within 90 days after the
24 giving of the notice of the determination, shall file a protest in
25 writing as provided in R.S.54:49-18 and request a hearing, or unless
26 the director on the director's own motion shall redetermine the
27 amount due. After the hearing the director shall give notice of the
28 determination to the person on whom the water diversion user fee is
29 imposed.

30 (2) Any person subject to the water diversion user fee who fails
31 to file a return when due or to pay the user fee when it becomes
32 due, as herein provided, shall be subject to such penalties and
33 interest as provided in the State Uniform Tax Procedure Law,
34 R.S.54:48-1 et seq. If the director determines that the failure to
35 comply with any provision of this section was excusable under the
36 circumstances, the director may remit that part or all of the penalty
37 as shall be appropriate under the circumstances.

38 d. (1) Any person subject to the water diversion user fee who
39 is subject to the jurisdiction or rate regulation of the Board of
40 Public Utilities as a public utility shall collect the water diversion
41 user fee imposed by this section by imposing an automatic
42 surcharge on any tariff established pursuant to law for water rates
43 and charges. The Board of Public Utilities shall issue an
44 appropriate order adjusting the tariffs established pursuant to law to
45 reflect these payments. In issuing any order required by this
46 subsection, the Board of Public Utilities shall be exempt from the
47 provisions of R.S.48:2-21.

48 (2) Any person subject to the water diversion user fee may
49 collect the water diversion user fee imposed by this section by

1 including the amount of user the fee due as a separate line item on
2 every customer bill or other statement presented to consumers. The
3 person subject to the water diversion user fee may use up to one
4 percent of all revenues collected to defray the costs of
5 administration and collection of the water diversion user fee. The
6 director shall credit the proper amount to the person subject to the
7 water diversion user fee upon receipt of written documentation of
8 the actual costs expended for the collection of the water diversion
9 user fee.

10 e. The director shall deposit all revenues collected pursuant to
11 this section in the Water Resources Protection Trust Fund created
12 pursuant to section 4 of this act.

13 f. In addition to the other powers granted to the director in this
14 section, the director is authorized to:

15 (1) Delegate to any officer or employee of the division those
16 powers and duties as the director deems necessary to carry out
17 efficiently the provisions of this section, and the person to whom
18 the power has been delegated shall possess and may exercise all of
19 these powers and perform all of the duties delegated by the director;
20 and

21 (2) Prescribe and distribute all necessary forms for the
22 implementation of this section.

23 g. The water diversion user fee imposed by this section shall be
24 governed in all respects by the provisions of the State Uniform Tax
25 Procedure Law, R.S.54:48-1 et seq., except only to the extent that a
26 specific provision of this section may be in conflict therewith.

27 h. The water diversion user fee imposed by this section shall
28 not be imposed on:

29 (1) water diverted for agricultural or horticultural purposes
30 under a water usage certification required pursuant to the provisions
31 of section 6 of P.L.1981, c.262 (C.58:1A-6) or as provided in
32 section 2 of P.L.1981, c.277 (C.58:1A-7.2);

33 (2) water diverted for a nonconsumptive use. In the case of
34 those permittees or persons with diversion privileges to divert water
35 for both a consumptive use and a nonconsumptive use, the
36 calculation of the amount of water diverted for nonconsumptive use
37 shall be determined by the department based on water use as
38 reported to the department pursuant to P.L.1981, c.262 (C.58:1A-1
39 et seq.) or P.L.1993, c.202 (C.58:1A-7.3 et al.), or if not reported,
40 based on standard industry water use profiles;

41 (3) surface water diverted by permittees or persons required to
42 apply for and obtain a water use registration in such a manner that it
43 is returned to another surface water body;

44 (4) water diverted for the remediation of areas with
45 contaminated ground water supplies, or for other remedial actions
46 as provided by law;

47 (5) water diverted for emergency purposes, including
48 firefighting, flood prevention, response to a discharge of hazardous

1 substances, or for other emergency purposes as may be determined
2 by the department;

3 (6) diversions of salt water except whenever the department
4 determines that the diversion and resultant usage may affect
5 utilization of fresh water;

6 (7) water diverted for a paper manufacturing process utilizing
7 post-consumer waste material in the manufacture of a recycled
8 product which constitutes at least 75 percent of total annual sales
9 dollar volume of the products manufactured in the State by that
10 manufacturer as determined by the director;

11 (8) water subject to the water consumption user fee imposed by
12 section 7 of this act;

13 (9) diversions of saline water except whenever the department
14 determines that the diversion and resultant usage may affect
15 utilization of fresh water;

16 (10) water diverted for purposes of reducing air emissions or
17 water pollutants necessary for compliance with local, State or
18 federal regulations;

19 (11) water diverted for the purpose of transferring water
20 between public water systems; or

21 (12) water diverted for resale, or a bulk sale of water diverted to
22 another public water system.

23 For the purposes of this subsection, “salt water” means water
24 containing a chloride concentration in excess of 10,000 mg/L;
25 “post-consumer waste material” means a material or product that
26 would otherwise become solid waste, having completed its intended
27 end use and product life cycle, except that “post-consumer waste
28 material” shall not include secondary waste material or materials
29 and by-products generated from, and commonly used within, an
30 original manufacturing and fabrication process; “recycled product”
31 means any product or commodity which is manufactured or
32 produced in whole or in part from post-consumer waste material
33 and which meets the recycled content standard of the United States
34 Environmental Protection Agency as published in the
35 Comprehensive Procurement Guidelines for Products Containing
36 Recovered Material; “secondary waste material” means waste
37 material generated after the completion of a manufacturing process;
38 “solid waste” means the same as that term is defined in section 3 of
39 P.L.1970, c.39 (C.13:1E-3); and “saline water” means water
40 containing a chloride concentration in excess of 250 mg/L.

41 i. Any person subject to the water diversion user fee shall be
42 eligible for water conservation credits against the water diversion
43 user fee. Water conservation credits shall be granted to any
44 permittee or person required to apply for and obtain a water use
45 registration who can demonstrate a net reduction in annual water
46 use over any 10-year period commencing January 1, 2019. The
47 water conservation credits shall be equal to 50 percent of the
48 difference between the maximum year withdrawal during this
49 period and the current year, where the reduction can be documented

1 as attributable to water conservation. The department shall approve
2 the diversion permit or water use registration modification to reflect
3 the water conservation credits granted.
4

5 9. (New section) The department shall undertake a safe or
6 dependable yield analysis of the State's surface and ground water
7 sources to ascertain what actions may be required to maintain safe
8 yield. The department shall include the results of the safe or
9 dependable yield analysis in revisions and updates of the New
10 Jersey Statewide Water Supply Plan prepared pursuant to section 13
11 of P.L.1981, c.262 (C.58:1A-13).
12

13 10. (New section) a. The department shall adopt, pursuant
14 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
15 1 et seq.), rules and regulations as are necessary to effectuate the
16 purposes of this act.

17 b. The Director of the Division of Taxation in the Department
18 of the Treasury, in consultation with the department, and pursuant
19 to the "Administrative Procedure Act," shall adopt rules and
20 regulations as are necessary to effectuate the provisions of sections
21 7 and 8 of this act.
22

23 11. Section 3 of P.L.1985, c.334 (C.58:11B-3) is amended to
24 read as follows:

25 3. As used in sections 1 through 27 of P.L.1985, c.334
26 (C.58:11B-1 through C.58:11B-27), sections 23 through 27 of
27 P.L.1997, c.224 (C.58:11B-10.1 et al.), and sections 22 and 34
28 through 38 of P.L.2016, c.56 (C.58:11B-10.3 through C.58:11B-
29 10.5, C.58:11B-20.2, C.58:11B-22.3, and C.58:11B-22.4):

30 "Bonds" means bonds issued by the trust pursuant to P.L.1985,
31 c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-
32 10.1 et al.);

33 "Combined sewer overflow" means the discharge of untreated or
34 partially treated stormwater runoff and wastewater from a combined
35 sewer system into a body of water;

36 "Combined sewer system" means a sewer system designed to
37 carry sanitary wastewater at all times, which is also designed to
38 collect and transport stormwater runoff from streets and other
39 sources, thereby serving a combined purpose;

40 "Commissioner" means the Commissioner of the Department of
41 Environmental Protection;

42 "Cost" means the cost of all labor, materials, machinery and
43 equipment, lands, property, rights and easements, financing
44 charges, interest on bonds, notes or other obligations, plans and
45 specifications, surveys or estimates of costs and revenues,
46 engineering and legal services, and all other expenses necessary or
47 incident to all or part of an environmental infrastructure project;

48 "Department" means the Department of Environmental
49 Protection;

1 "Environmental infrastructure project" means the acquisition,
2 construction, improvement, repair or reconstruction of all or part of
3 any structure, facility or equipment, or real or personal property
4 necessary for or ancillary to any: (1) wastewater treatment system
5 project, including any stormwater management or combined sewer
6 overflow abatement projects; or (2) water supply project, as
7 authorized pursuant to P.L.1985, c.334 (C.58:11B-1 et seq.) or
8 P.L.1997, c.224 (C.58:11B-10.1 et al.), including any water
9 resources project, as authorized pursuant to P.L.2003, c.162;

10 "Federal infrastructure bank program" means the United States
11 Department of Transportation State Infrastructure Bank Program
12 provided for in section 350 of Pub.L.104-59 and Pub.L.102-240 as
13 amended or superseded;

14 "Local government unit" means (1) a State authority, county,
15 municipality, municipal, county or regional sewerage or utility
16 authority, municipal sewerage district, joint meeting, improvement
17 authority, or any other political subdivision of the State authorized
18 to construct, operate, and maintain wastewater treatment systems;
19 (2) a State authority, district water supply commission, county,
20 municipality, municipal, county or regional utilities authority,
21 municipal water district, joint meeting, or any other political
22 subdivision of the State authorized pursuant to law to operate or
23 maintain a public water supply system or to construct, rehabilitate,
24 operate, or maintain water supply facilities or otherwise provide
25 water for human consumption; or (3) a county, municipality,
26 municipal, county or regional transportation authority, or any other
27 political subdivision of the State authorized to construct, operate,
28 and maintain public highways or transportation projects as defined
29 pursuant to this section;

30 "New Jersey Environmental Infrastructure Financing Program"
31 means the financing program to fund environmental infrastructure
32 projects;

33 "New Jersey Transportation Infrastructure Financing Program"
34 means the financing program to fund transportation infrastructure
35 projects;

36 "Notes" means notes issued by the trust pursuant to P.L.1985,
37 c.334 (C.58:11B-1 et seq.), P.L.1997, c.224 (C.58:11B-10.1 et al.),
38 or sections 22 and 34 through 38 of P.L.2016, c.56 (C.58:11B-10.3
39 through C.58:11B-10.5, C.58:11B-20.2, C.58:11B-22.3, and
40 C.58:11B-22.4);

41 "Onsite septic system ordinance or regulation" means an
42 ordinance adopted by a municipality or county or regulation
43 adopted by a regional planning agency establishing the
44 requirements for construction, maintenance and repair of onsite
45 wastewater treatment and disposal systems;

46 "Onsite wastewater treatment and disposal system" means an on-
47 site system designed to treat and dispose of domestic sewage;

48 "Other assistance" means forms of financial assistance, in
49 addition to loans, authorized by the New Jersey Infrastructure Bank

1 from the State Transportation Infrastructure Bank Fund, including,
2 but not limited to, use of funds to: provide credit enhancements;
3 serve as a capital reserve for bond or other debt instrument
4 financing; subsidize interest rates; ensure the issuance of letters of
5 credit and credit instruments; finance purchase and lease
6 agreements with respect to transit projects; and provide bond or
7 other debt financing instrument security;

8 "Project" means the acquisition, construction, improvement,
9 repair or reconstruction of all or part of any structure, facility, or
10 equipment, or real or personal property necessary for or ancillary to
11 any: (1) wastewater treatment system project, including any
12 stormwater management or combined sewer overflow abatement
13 projects; (2) water supply project, as authorized pursuant to
14 P.L.1985, c.334 (C.58:11B-1 et seq.) or P.L.1997, c.224 (C.58:11B-
15 10.1 et al.), including any water resources project, as authorized
16 pursuant to P.L.2003, c.162; or (3) transportation project authorized
17 pursuant to sections 22 and 34 through 38 of P.L.2016, c.56
18 (C.58:11B-10.3 through C.58:11B-10.5, C.58:11B-20.2, C.58:11B-
19 22.3, and C.58:11B-22.4);

20 "Public highway" means public roads, streets, expressways,
21 freeways, parkways, motorways and boulevards, including bridges,
22 tunnels, overpasses, underpasses, interchanges, express bus
23 roadways, bus pullouts and turnarounds, park-ride facilities, traffic
24 circles, grade separations, traffic control devices, the elimination or
25 improvement of crossings of railroads and highways, whether at-
26 grade or not at-grade, bicycle and pedestrian pathways and
27 pedestrian and bicycle bridges, and any property, rights of way,
28 easements and interests therein needed for the construction,
29 improvement, and maintenance of highways;

30 "Public water utility" means any investor-owned water company
31 or small water company;

32 "Small water company" means any company, purveyor or entity,
33 other than a governmental agency, that provides water for human
34 consumption and which regularly serves less than 1,000 customer
35 connections, including nonprofit, noncommunity water systems
36 owned or operated by a nonprofit group or organization;

37 "Stormwater management system" means any equipment, plants,
38 structures, machinery, apparatus, management practices, or land, or
39 any combination thereof, acquired, used, constructed, implemented
40 or operated to prevent nonpoint source pollution, abate improper
41 cross-connections and interconnections between stormwater and
42 sewer systems, minimize stormwater runoff, reduce soil erosion, or
43 induce groundwater recharge, or any combination thereof;

44 "Transportation project" means capital projects for public
45 highways, approach roadways and other necessary land-side
46 improvements, ramps, signal systems, roadbeds, transit lanes or
47 rights of way, pedestrian walkways and bridges connecting to
48 passenger stations and servicing facilities, bridges, and grade
49 crossings;

1 "Trust" means the New Jersey Infrastructure Bank created
2 pursuant to section 4 of P.L.1985, c.334 (C.58:11B-4);

3 "Wastewater" means residential, commercial, industrial, or
4 agricultural liquid waste, sewage, septage, stormwater runoff, or
5 any combination thereof, or other liquid residue discharged or
6 collected into a sewer system or stormwater management system, or
7 any combination thereof;

8 "Wastewater treatment system" means any equipment, plants,
9 structures, machinery, apparatus, or land, or any combination
10 thereof, acquired, used, constructed or operated by, or on behalf of,
11 a local government unit for the storage, collection, reduction,
12 recycling, reclamation, disposal, separation, or other treatment of
13 wastewater or sewage sludge, or for the collection or treatment, or
14 both, of stormwater runoff and wastewater, or for the final disposal
15 of residues resulting from the treatment of wastewater, including,
16 but not limited to, pumping and ventilating stations, treatment
17 plants and works, connections, outfall sewers, interceptors, trunk
18 lines, stormwater management systems, and other personal property
19 and appurtenances necessary for their use or operation; "wastewater
20 treatment system" shall include a stormwater management system
21 or a combined sewer system;

22 "Wastewater treatment system project" means any work relating
23 to the acquisition, construction, improvement, repair or
24 reconstruction of all or part of any structure, facility or equipment,
25 or real or personal property necessary for or ancillary to any
26 wastewater treatment system that meets the requirements set forth
27 in sections 20, 21, and 22 of P.L.1985, c.334 (C.58:11B-20,
28 C.58:11B-21, and C.58:11B-22); or any work relating to any of the
29 stormwater management or combined sewer overflow abatement
30 projects identified in the stormwater management and combined
31 sewer overflow abatement project priority list adopted by the
32 commissioner pursuant to section 28 of P.L.1989, c.181; or any
33 work relating to the purposes set forth in subsection b. of section 6
34 of P.L. , c. (C.)(pending before the Legislature as this bill);
35 or any work relating to the purposes set forth in section 6 of
36 P.L.2003, c.162; or any work relating to any other project eligible
37 for financing under the "Federal Water Pollution Control Act
38 Amendments of 1972" (33 U.S.C. s.1251 et seq.), or any
39 amendatory or supplementary acts thereto;

40 "Water resources project" means any work related to transferring
41 water between public water systems during a state of water
42 emergency, to avert a drought emergency in all or any part of the
43 State, to plan, design or construct interconnections of existing water
44 supplies, or to extend water supplies to areas with contaminated
45 ground water supplies , including any work relating to the
46 appropriate purposes set forth in subsection a. of section 6 of
47 P.L. , c. (C.)(pending before the Legislature as this bill);

48 "Water supply facilities" means and refers to the real property
49 and the plants, structures, interconnections between existing water

1 supply facilities, machinery and equipment and other property, real,
2 personal and mixed, acquired, constructed or operated, or to be
3 acquired, constructed or operated, in whole or in part, by or on
4 behalf of a public water utility, or by or on behalf of the State or a
5 local government unit, for the purpose of augmenting the natural
6 water resources of the State and making available an increased
7 supply of water for all uses, or of conserving existing water
8 resources, and any and all appurtenances necessary, useful or
9 convenient for the collecting, impounding, storing, improving,
10 treating, filtering, conserving or transmitting of water, and for the
11 preservation and protection of these resources and facilities,
12 whether in public or private ownership, and providing for the
13 conservation and development of future water supply resources, and
14 facilitating incidental recreational uses thereof;

15 "Water supply project" means any work relating to the
16 acquisition, construction, improvement, repair or reconstruction of
17 all or part of any structure, facility or equipment, or real or personal
18 property necessary for or ancillary to water supply facilities that
19 meets the requirements set forth in sections 24, 25, and 26 of
20 P.L.1997, c.224 (C.58:11B-20.1, C.58:11B-21.1, and C.58:11B-
21 22.1); or any work relating to the purposes set forth in section 4 of
22 P.L.1981, c.261; or any work relating to the purposes set forth in
23 section 6 of P.L.2003, c.162; or any work relating to the appropriate
24 purposes set forth in subsection a. of section 6 of P.L. , c. (C.
25)(pending before the Legislature as this bill) or any work relating to
26 any other project eligible for funding pursuant to the federal "Safe
27 Drinking Water Act Amendments of 1996," Pub.L.104-182, and any
28 amendatory and supplementary acts thereto.
29 (cf: P.L.2017, c.144, s.1)

30
31 12. This act shall take effect immediately, except that sections 7
32 and 8 of this act shall take effect on the first day of the third full
33 fiscal quarter following the date of enactment of this act.
34

35

36

37 STATEMENT

38

39 This bill would establish the Water Resources Protection Trust
40 Fund (fund), to be administered by the Department of
41 Environmental Protection (DEP). Moneys in the fund would be
42 derived from: (1) a water consumption user fee imposed on the
43 owner or operator of every public community water system equal to
44 \$0.40 per 1,000 gallons of water delivered to a consumer; and (2) a
45 water diversion user fee imposed on every person required by law
46 to obtain a diversion permit or a water use registration equal to
47 \$0.40 per 1,000 gallons of water diverted for a consumptive use.
48 The water consumption user fee would be collected in the same
49 manner as the water tax on public community water systems
imposed under the "Safe Drinking Water Act."

1 The following water uses would be exempt from the water
2 consumption user fee:

3 (1) water delivered to a consumer for the purpose of storage for
4 future water supplies;

5 (2) water delivered to a consumer for the purpose of transferring
6 water between public water systems;

7 (3) water delivered to a consumer for emergency purposes,
8 including firefighting, flood prevention, response to a discharge of
9 hazardous substances, or for other emergency purposes as may be
10 determined by the DEP;

11 (4) water delivered to a consumer, including water delivered for
12 resale, or a bulk sale of water delivered to a consumer in another
13 public water system; and

14 (5) unaccounted-for water of 15 percent or less.

15 The following water uses would be exempt from the water
16 diversion user fee:

17 (1) water diverted for agricultural or horticultural purposes
18 under a water usage certification required pursuant to law;

19 (2) water diverted for a nonconsumptive use. In the case of
20 those permittees or persons with diversion privileges to divert water
21 for both a consumptive use and a nonconsumptive use, the
22 calculation of the amount of water diverted for nonconsumptive use
23 would be determined by the DEP based on water use as reported to
24 the DEP pursuant to law, or if not reported, based on standard
25 industry water use profiles;

26 (3) surface water diverted by permittees or persons required to
27 apply for and obtain a water use registration in such a manner that it
28 is returned to another surface water body;

29 (4) water diverted for the remediation of areas with
30 contaminated ground water supplies, or for other remedial actions
31 as provided by law;

32 (5) water diverted for emergency purposes, including
33 firefighting, flood prevention, response to a discharge of hazardous
34 substances, or for other emergency purposes as may be determined
35 by the DEP;

36 (6) diversions of salt water except whenever the DEP
37 determines that the diversion and resultant usage may affect
38 utilization of fresh water;

39 (7) water diverted for a paper manufacturing process utilizing
40 post-consumer waste material in the manufacture of a recycled
41 product which constitutes at least 75 percent of total annual sales
42 dollar volume of the products manufactured in the State by that
43 manufacturer as determined by the Director of the Division of
44 Taxation;

45 (8) water subject to the water consumption user fee;

46 (9) diversions of saline water except whenever the DEP
47 determines that the diversion and resultant usage may affect
48 utilization of fresh water;

1 (10) water diverted for purposes of reducing air emissions or
2 water pollutants necessary for compliance with local, State or
3 federal regulations;

4 (11) water diverted for the purpose of transferring water
5 between public water systems; and

6 (12) water diverted for resale, or a bulk sale of water diverted to
7 another public water system.

8 Any person subject to the water diversion user fee would be
9 eligible for water conservation credits against the water diversion
10 user fee. Water conservation credits would be granted to any
11 permittee or person required to apply for and obtain a water use
12 registration who can demonstrate a net reduction in annual water
13 use over any 10-year period commencing January 1, 2019. The
14 water conservation credits would be equal to 50 percent of the
15 difference between the maximum year withdrawal during this
16 period and the current year, where the reduction can be documented
17 as attributable to water conservation. The DEP would approve the
18 diversion permit or water use registration modification to reflect the
19 water conservation credits granted.

20 The fund would be administered by the DEP and would be
21 credited with all water consumption user fee and water diversion
22 user fee revenue collected under sections 7 and 8 of the bill, all
23 interest and other investment income received on moneys in the
24 fund, and all sums received as repayment of principal and interest
25 on outstanding loans made from the fund. The DEP would be
26 authorized to use not more than one percent of the total revenues
27 deposited in the fund during the fiscal year to cover administrative
28 expenses incurred in implementing the provisions of the bill.

29 The moneys in the fund may be used for the following water
30 quality, supply, and infrastructure projects:

31 (1) the costs of transferring water between public water systems
32 during a state of water emergency or to avert a drought emergency
33 in all or any part of the State;

34 (2) the protection of existing water supplies through the
35 acquisition of watershed and wetlands areas;

36 (3) the interconnection of existing water supplies, and the
37 extension of water supplies to areas with contaminated ground
38 water supplies;

39 (4) the costs of water supply infrastructure projects undertaken
40 by water purveyors for the purpose of drought mitigation;

41 (5) the costs of a safe or dependable yield analysis of the State's
42 surface and ground water resources undertaken by the DEP, up to
43 \$100,000;

44 (6) projects to rehabilitate, repair, or replace public water
45 system infrastructure;

46 (7) grants to local government units to finance the cost of
47 developing asset management programs for public water systems;
48 and

49 (8) projects to remediate lead in drinking water infrastructure.

1 In addition, beginning 10 years after the effective date of the bill,
2 the money in the fund may be used for projects to rehabilitate,
3 repair, or replace wastewater treatment system infrastructure,
4 including, but not limited to, combined sewer overflow abatement
5 projects.

6 Whenever any moneys in the fund are used for the protection of
7 existing water supplies through the acquisition of watershed and
8 wetlands areas, the percentage of moneys used for such acquisitions
9 in the Highlands region would be an amount equivalent to not less
10 than the percentage of total revenues deposited in the fund which
11 were collected from user fee payers within the Highlands region,
12 and the percentage of moneys used for such acquisitions in the
13 Pinelands area would be an amount equivalent to not less than the
14 percentage of total revenues deposited in the fund which were
15 collected from user fee payers within the Pinelands area.

16 The DEP would be authorized to make low-interest loans to local
17 governments and water purveyors to finance the cost of authorized
18 water quality, supply, and infrastructure projects. To be eligible for
19 a grant, a local government or water purveyor would be required to
20 demonstrate the ability to match the grant requested by generating
21 funds in ratios specified by the DEP.

22 On or before January 15 of each year, the DEP would submit to
23 the Legislature a financial plan designed to implement the financing
24 of the projects on the project priority list submitted to the
25 Legislature for approval by May 15 of that year. The financial plan
26 would contain an enumeration of the projects for which the DEP
27 intends to provide funds and the terms and conditions of any loans
28 or grants associated therewith, the anticipated rate of interest per
29 year and repayment schedule for any loans. The financial plan
30 would also set forth a complete operating and financial statement
31 covering its proposed operations during the forthcoming fiscal year,
32 summarize the status of each project for which grants or loans have
33 been made, and describe any major impediments to the
34 accomplishment of the planned projects.

35 On or before May 15 of each fiscal year, the DEP would prepare
36 and submit to the Legislature for approval a project priority list
37 recommending the particular water quality, supply, and
38 infrastructure projects to be funded for the upcoming fiscal year.
39 The project priority list would include a description of each project,
40 its purpose, impact, cost, and construction schedule, and an
41 explanation of the manner in which priorities were established.

42 The bill provides that no expenditure from the fund would be
43 made except by an appropriation made pursuant to law and in
44 accordance with the project priority list developed by the DEP.
45 Each such appropriation act would clearly set forth all terms and
46 conditions governing the expenditure of the appropriation, would
47 identify each specific project or projects for which an appropriation
48 is made, and may provide such sums as may be necessary to cover
49 the costs associated with the administration thereof.

1 The bill requires the DEP to undertake a safe or dependable yield
2 analysis of the State's surface and ground water sources to ascertain
3 what actions may be required to maintain safe yield, and to include
4 the results of the analysis in revisions and updates of the New
5 Jersey Statewide Water Supply Plan.